

STATE OF MICHIGAN  
IN THE SUPREME COURT

JEFFREY SOTELO, SUSAN SOTELO,  
WALTER J. VANDER WALL, individually and  
as Trustee, and PHYLLIS A. VANDER WALL,  
Individually and as Trustee,

Plaintiffs/Appellees,

v

TOWNSHIP OF GRANT,

Defendant/Appellant.

Supreme Court No. 123430

Court of Appeals No. 238690

Lower Court No. 00-018133-AW

---

**MOTION OF THE MICHIGAN DEPARTMENT OF CONSUMER AND INDUSTRY  
SERVICES TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF APPLICATION FOR  
LEAVE TO APPEAL**

23430 (35)

3/25

39323

Michael A. Cox  
Attorney General

Thomas L. Casey (P24215)  
Solicitor General  
Counsel of Record

A. Michael Leffler (P24254)  
Assistant in Charge

James E. Riley (P23992)  
Assistant Attorney General  
Attorneys for Michigan Department  
of Consumer and Industry Services  
Department of Attorney General  
Environment, Natural Resources and  
Agriculture Division  
Constitution Hall, 5<sup>th</sup> Floor South  
525 West Allegan  
Lansing, MI 48913  
(517) 373-7540

**FILED**

MAR 14 2003

CORBIN R. DAVIS  
CLERK  
MICHIGAN SUPREME COURT

NOW COMES the Michigan Department of Consumer and Industry Services, by and through its attorneys Michael A. Cox, Attorney General for the State of Michigan, Thomas L. Casey, Solicitor General and James E. Riley, Assistant Attorney General, and in support of its motion to file an amicus curiae brief in support of Grant Township's application for leave to appeal states:

1. The Michigan Department of Consumer and Industry Services is the state agency responsible for the administration of the Land Division Act (LDA), 1967 PA 288, MCL 560.101 *et seq.*, pursuant to Executive Orders 1996-2, MCL 445.2001, and 1980-1, MCL 16.732.
2. The LDA regulates the division of land for the promotion of the public health, safety and general welfare by, among other things, requiring that land be suitable for occupation and development, including assurance of such matters as access, sanitation and drainage.
3. The LDA allows a certain number of relatively larger divisions of land to occur without the creation of subdivision plats or condominium developments.
4. Since the implementation of the LDA on January 1, 1968, the limit on the number of divisions of land that may occur before the requirements of platting or implementing a condominium development has been based on the size of the "parent parcel" as that parcel existed on a fixed date.
5. By its Opinion and Order in this matter, the Court of Appeals has disregarded legislative intent, as well as the interpretation of the LDA by state and local governments which administer that Act, by disregarding the fact that the two parcels at issue were "parent parcels" in lawful existence as of March 31, 1997, the effective date of an amendment to the LDA, and that any future divisions of those parcels were to be based on their size as of that date.

6. By disregarding what the legislature intended as a baseline from which all future divisions would be determined, the Court of Appeals decision, if not reversed, will result in far more divisions of land to occur that are exempt from the platting requirements of the LDA and the associated protections.

7. Further, the Court of Appeals erroneously held that the LDA must be "strictly and narrowly" construed because it is "in derogation of the common law right to freely alienate real property." Slip Opinion, p. 3. The Court neither cites any authority for the existence of a common law right to alienate property, nor analyzes how alienability is being affected by the LDA. Such a sweeping conclusion could impact virtually all statutes regulating lands in Michigan, including statutes pertaining to zoning and environmental protections.

8. The issues presented are of significant public interest involving the state and its political subdivisions, and their ability to regulate land for the protection of the public health, safety and welfare.

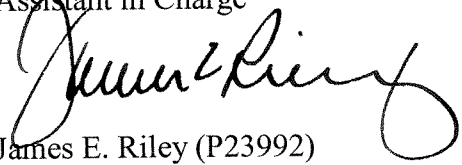
WHEREFORE, for the reasons set forth above, the Michigan Department and Consumer and Industry Services requests that this Court grant its motion to file an amicus curiae brief in support of Grant Township's application for leave to appeal.

Respectfully submitted,

Michael A. Cox  
Attorney General

Thomas L. Casey (P24215)  
Solicitor General  
Counsel of Record

A. Michael Leffler (P24254)  
Assistant in Charge



James E. Riley (P23992)  
Assistant Attorney General  
Attorneys for Michigan Department  
of Consumer and Industry Services  
Department of Attorney General  
Environment, Natural Resources and  
Agriculture Division  
Constitution Hall, 5<sup>th</sup> Floor South  
525 West Allegan  
Lansing, MI 48913  
(517) 373-7540

Dated: March 14, 2003  
s:plats sotelo motion app lv appeal

STATE OF MICHIGAN  
IN THE SUPREME COURT

JEFFREY SOTELO, SUSAN SOTELO,  
WALTER J. VANDER WALL, individually and  
as Trustee, and PHYLLIS A. VANDER WALL,  
Individually and as Trustee,

Plaintiffs/Appellees,

v

TOWNSHIP OF GRANT,

Defendant/Appellant.

---

Supreme Court No. 123430

Court of Appeals No. 238690

Lower Court No. 00-018133-AW

**AMICUS CURIAE BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL**

Michael A. Cox  
Attorney General

Thomas L. Casey (P24215)  
Solicitor General  
Counsel of Record

A. Michael Leffler (P24254)  
Assistant in Charge

James E. Riley (P23992)  
Assistant Attorney General  
Attorneys for Michigan Department of  
Consumer and Industry Services  
Department of Attorney General  
Environment, Natural Resources and  
Agriculture Division  
Constitution Hall, 5<sup>th</sup> Floor South  
525 West Allegan  
Lansing, MI 48913  
(517) 373-7540

Dated: March 14, 2003

## TABLE OF CONTENTS

	<u>Page</u>
INDEX OF AUTHORITIES .....	ii
QUESTIONS PRESENTED FOR REVIEW .....	iii
STATEMENT OF JUDGMENT OR ORDER APPEALED FROM AND RELIEF SOUGHT ...	1
STATEMENT OF PROCEEDINGS AND FACTS .....	2
ARGUMENT .....	3
I. The boundaries of "parent parcels" and "parent tracts" are fixed by law to provide a baseline by which to determine the number of divisions that may occur without triggering the requirement to make a plat. ....	3
A. Standard of Review .....	3
B. While "parent parcels" and "parent tracts" may be divided, the boundaries for determining the number of divisions exempt from the platting requirements were fixed on March 31, 1997, the effective date of an amendment to the Land Division Act and do not change as the Court of Appeals erroneously concluded. ....	3
C. The LDA is not in derogation of the common law right to freely alienate real property and should not be strictly and narrowly construed. ....	5
RELIEF REQUESTED .....	7

## INDEX OF AUTHORITIES

Page

### Cases

<i>Arrowhead Development Co v Livingston Co Rd Comm</i> , 413 Mich 505, 516; 322 NW2d 702 (1982) .....	6
---	---

### Statutes

1967 PA 288 .....	3
MCL 560.101 .....	iii,3
MCL 560.102(i) .....	3
MCL 560.108 .....	3
MCL 560.109 .....	4

## **QUESTIONS PRESENTED FOR REVIEW**

- I. Whether the Court of Appeals improperly interpreted the Michigan Land Division Act , MCL 560.101 *et seq.* when it held that “parent parcel” boundaries are not necessarily fixed as of March 31, 1997 (the effective date of an amendment to the Land Division Act) and can change over time due to land transfers between parent parcels.**
- II. Whether the Court of Appeals improperly applied a long-standing legal principle governing interpretation of statutes when it held that the Michigan Land Division Act is in derogation of the common law right to freely alienate real property, and as such, must be strictly and narrowly construed.**



**STATEMENT OF JUDGMENT OR ORDER APPEALED FROM  
AND RELIEF SOUGHT**

On February 21, 2003, the Michigan Court of Appeals issued its opinion in this case for publication, wherein it reversed the decision of the Trial Court and remanded the case to the Trial Court for entry of an order directing Grant Township to approve the division of the properties as requested by Plaintiffs/Appellees.

**STATEMENT OF PROCEEDINGS AND FACTS**

*Amicus curiae* adopts Grant Township's Statement of Facts.

## ARGUMENT

- I. The boundaries of "parent parcels" and "parent tracts" are fixed by law to provide a baseline by which to determine the number of divisions that may occur without triggering the requirement to make a plat.**

**A. Standard of Review**

Amicus Curiae concurs with the township's position that this matter involves a question of law and that review on appeal is *de novo*.

- B. While "parent parcels" and "parent tracts" may be divided, the boundaries for determining the number of divisions exempt from the platting requirements were fixed on March 31, 1997, the effective date of an amendment to the Land Division Act and do not change as the Court of Appeals erroneously concluded.**

The Land Division Act (LDA), 1967 PA 288, MCL 560.101 *et seq*, establishes a baseline for determining the number of divisions of land that may occur without having to subdivide the land through the platting process. Section 108 [MCL 560.108] exempts a certain number of divisions based on the size of the "parent parcel" or "parent tract." "Parent parcel" and "parent tract" are defined at section 102(i) [MCL 560.102(i)]:

"Parent parcel" or "parent tract" means a parcel or tract, respectively, lawfully in existence on the effective date of the amendatory act that added this subdivision.

Likewise, "parcel" and "tract" are defined at sections 102(g) and (h):

(g) "Parcel" means a continuous area or acreage of land which can be described as provided for in this act.

(h) "Tract" means 2 or more parcels that share a common property line and are under the same ownership.

Section 108(2) carefully differentiates between "parent parcels" and "parent tracts" from "parcels."

(2) Subject to subsection (3), the division, together with any previous divisions of the same parent parcel or parent tract, shall result in a number of parcels not more than the sum of the following, as applicable:

(a) For the first 10 acres or fraction thereof in the parent parcel or parent tract, 4 parcels.

(b) For each whole 10 acres in excess of the first 10 acres in the parent parcel or parent tract, 1 additional parcel, for up to a maximum of 11 additional parcels.

(c) For each whole 40 acres in excess of the first 120 acres in the parent parcel or parent tract, 1 additional parcel.

Additionally, section 108(5) clarifies that a parcel or tract created by an exempt split or division is not a new parent parcel or new parent tract.

As a consequence of section 108, to determine how many divisions may be made of a parent parcel or parent tract, or how many divisions remain after a division has occurred, one must always reference how the parent parcel or parent tract appeared on March 31, 1997, the effective date of the amendatory act. All land in Michigan for division purposes was, in essence, frozen as of that date. Subsequent land divisions would neither increase nor reduce the size of a parent parcel or parent tract, and therefore neither increase nor decrease the number of divisions exempt from the platting requirements of the LDA.

Section 102(d) defines division as the splitting or partitioning of a parcel or tract in a matter that satisfies both sections 108 and 109:

"Division" means the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representatives, successors, or assigns for the purpose of sale, or lease of more than 1 year, or of building development that results in 1 or more parcels of less than 40 acres or the equivalent, and that satisfies the requirements of sections 108 and 109. . . .

Section 108 sets a maximum number of divisions that may be made without requiring the land to be platted. Section 109 [MCL 560.109] recognizes that local ordinances may operate in a manner to reduce the number of divisions otherwise allowed by section 108.

In this case, as of March 31, 1997, the 2.35 acre parcel of land held by the Sotelos could only be lawfully divided into two parcels, due to the township's one acre minimum parcel size.

Filut was entitled to four divisions of his 7.63 acre parent parcel. Thus, the limit on the total number of splits allowed for the two parcels was six.

Importantly, section 109(2) buttresses the notion that the number of divisions allowed was fixed as of a date certain. Section 109(2) provides:

(2) The right to make divisions exempt from the plating requirements of this act under section 108 and this section can be transferred, but only from a parent parcel or parent tract to a parcel created from that parent parcel or parent tract.

Here, Filut could have given up one or more divisions to the Sotelos by a transfer, thereby increasing the number of splits available to the Sotelos but decreasing the number of splits available to Filut. The Court of Appeals decision renders this section of the LDA surplusage, as its interpretation of the LDA allows the number of divisions to change based on the amount of acreage currently available, and not with how the parent parcel or the parent tract appeared on March 31, 1997 and whether any divisions were transferred from the parent.

The Michigan Department of Consumer and Industry Services agrees with the argument set forth by Grant Township in its application for leave to appeal and brief in support regarding the legislative intent to base divisions on the acreage of a parent parcel or parent tract as of March 31, 1997.

**C. The LDA is not in derogation of the common law right to freely alienate real property and should not be strictly and narrowly construed.**

Without analysis, the Court of Appeals concludes that the LDA is a restraint on the alienation of real property and, because of this, the statute is in derogation of a common law right and must be strictly construed. No authority is cited for the "common law right to freely alienate real property." Slip Opinion, p. 3.

From a factual perspective, the LDA does not prohibit the alienation of property, but rather regulates how land is divided. The Sotelos were not being prevented from conveying their land, only from dividing it in the manner they did without complying with the platting requirements of the LDA. The LDA is no more of a restraint on the conveyance of land than any other regulatory measure governing the use and development of land, such as zoning ordinances and environmental statutes. The Court of Appeals erred in concluding that the LDA must be strictly and narrowly construed. In fact, this Court held in *Arrowhead Development Co v Livingston Co Rd Comm*, 413 Mich 505, 516; 322 NW2d 702 (1982) that provisions of the LDA must be read in context with the entire act, history and common sense:

Section 183 does not stand alone. It exists and must be read in context with the entire act, and the words and phrases used there must be assigned such meanings as are in harmony with the whole of the statute, construed in the light of history and common sense.

**RELIEF REQUESTED**

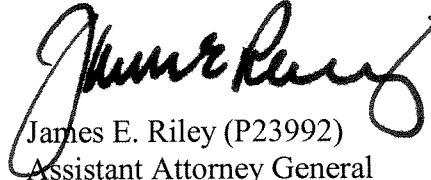
WHEREFORE, for the reasons set forth in its application and brief, the Michigan Department of Consumer and Industry Services requests this Court to grant the Township of Grant's application for leave to appeal.

Respectfully submitted,

Michael A. Cox  
Attorney General

Thomas L. Casey (P24215)  
Solicitor General  
Counsel of Record

A. Michael Leffler (P24254)  
Assistant in Charge

A handwritten signature in black ink, appearing to read "James E. Riley", is written over the printed name and title of the signatory.

James E. Riley (P23992)  
Assistant Attorney General  
Attorneys for Michigan Department of  
Consumer and Industry Services  
Department of Attorney General  
Environment, Natural Resources and  
Agriculture Division  
Constitution Hall, 5<sup>th</sup> Floor South  
525 West Allegan  
Lansing, MI 48913  
(517) 373-7540

Dated: March 14, 2003  
S:\open plats sotelo brief support appl lv

STATE OF MICHIGAN  
IN THE SUPREME COURT

JEFFREY SOTELO, SUSAN SOTELO,  
WALTER J. VANDER WALL, individually and  
as Trustee, and PHYLLIS A. VANDER WALL,  
Individually and as Trustee,

Plaintiffs/Appellees,

v

TOWNSHIP OF GRANT,

Defendant/Appellant.

---

Supreme Court No. 123430

Court of Appeals No. 238690

Lower Court No. 00-018133-AW

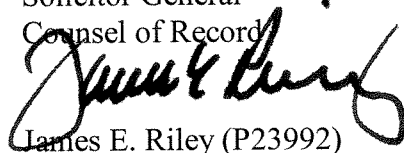
**NOTICE OF HEARING**

PLEASE TAKE NOTICE that the Motion of Michigan Department of Consumer and Industry Services to File Amicus Curiae Brief in Support of Application for Leave to Appeal will be submitted to this Court on Tuesday, March 25, 2003.

Respectfully submitted,

Michael A. Cox  
Attorney General

Thomas L. Casey (P24215)  
Solicitor General  
Counsel of Record



James E. Riley (P23992)  
Attorneys for Michigan Department  
of Consumer and Industry Services  
Department of Attorney General  
Environment, Natural Resources and  
Agriculture Division  
Constitution Hall, 5<sup>th</sup> Floor South  
525 West Allegan  
Lansing, MI 48913  
(517) 373-7540

Dated: March 14, 2003  
s:open plats sotelo noh



Nancy E. Hart  
Nancy E. Hart, Notary Public  
Ingham County, Michigan  
My commission expires: 07/10/2006

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX  
ATTORNEY GENERAL

5<sup>TH</sup> FLOOR SOUTH, CONSTITUTION HALL  
525 WEST ALLEGAN STREET  
LANSING, MICHIGAN 48913

March 14, 2003

Clerk of the Court  
Michigan Supreme Court  
Michigan Hall of Justice – Fourth Floor  
925 W. Ottawa Street  
P.O. Box 30052  
Lansing, MI 48909

Dear Clerk:

RE: *Sotelo, et al v Grant Township*  
Supreme Court No. 123430; Court of Appeals No. 238690

Enclosed for filing please find an original and 7 copies of Notice of Hearing, Motion of the Michigan Department of Consumer and Industry Services to File Amicus Curiae Brief in Support of Application for Leave to Appeal, Amicus Curiae Brief in Support of Application for Leave to Appeal and Proof of Service.

Thank you.

Sincerely yours,

A handwritten signature in cursive script, reading "James E. Riley".

James E. Riley  
First Assistant Attorney General  
Environment, Natural Resources,  
and Agriculture Division  
5<sup>th</sup> Floor South, Constitution Hall  
525 West Allegan Street  
Lansing, MI 48913  
(517) 373-7540

JER:rsc

Enc.

c: Richard R. Visser  
Clifford Bloom  
Maynard Dyer, MDCIS  
Doug Rhodus, MDCIS

s:open plats sotelo cl

